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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,436	07/13/2001	John Teloh	SMQ-082/P6396	3431

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EXAMINER
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WHIPPLE, BRIAN P

ART UNIT	PAPER NUMBER
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2152

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/30/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/905,436	TELOH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian P. Whipple	2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 1-45 are pending in this application and presented for examination.
2. In view of the appeal brief filed on 04/24/06, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Bunjob Jaroenchonwanit.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4, 6-7, 12, 15-18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Shakib et al. (Shakib), U.S. Patent No. 5,812,793.

5. As to claim 1, Shakib discloses in a storage network, a method for replicating a first data volume from a first computer to a plurality of remote data volumes stored on one or more remote computers (Col. 4, ln. 25-38; a replication data set is a data volume), said method comprising the steps of:

instructing a first data replication facility at said first computer to replicate said first data volume and to send the replica to multiple remote data volumes (Col. 4, ln. 25-38);

in response to the instructing, generating a replica of said first data volume from said first computer at said first data replication facility (Col. 4, ln. 25-38); and

forwarding said replica from said first data replication facility at said first computer said to said plurality of remote data volumes stored on said one or more remote computers (Col. 4, ln. 25-38).

6. As to claims 4, 12, and 20, Shakib discloses said first computer forwards said replica to said plurality of remote data volumes in an asynchronous manner (Col. 3, ln. 20-28).

7. As to claims 6 and 17, Shakib discloses said first computer and said one or more computers in said storage network operate without a volume manager facility (Col. 4, In. 25-38; each server tracks and broadcasts a copy of a replication data set without the use of a volume manager facility).

8. As to claim 7, Shakib discloses in a computer network having computers, wherein each of said computers in the network hosts a data replication facility for remote mirroring of data between said computers (Col. 4, In. 25-38; Col. 6, In. 40-42), a method comprising the steps of:

receiving a data volume at said data replication facility of a first of said computers from said first of said computers for said remote mirroring (Col. 4, In. 25-38); and

replicating said data volume from said first of said computers to multiple other ones of the computers (Col. 4, In. 25-38).

9. As to claim 15, Shakib discloses said computer network comprises one of a local area network (LAN), a wide area network (WAN), a virtual private network (VPN), an intranet, an extranet and the Internet (Col. 6, In. 55-60).

10. As to claim 16, Shakib discloses said computers comprises one of a server, a workstation, a "mainframe" and a personal computer (Col. 6, In. 40-42).

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11. As to claim 18, the claim is rejected for the same reasons as claim 1 above.

Additionally, Shakib discloses a computer readable medium holding computer executable instructions (Col. 6, ln. 11-16).

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 22-36 and 38-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Wilson, U.S. Patent No. 6,718,347 B1.

14. As to claim 22, Wilson discloses in a computer network capable of performing remote data mirroring from a first network location to one or more remote network locations, a method of performing said remote data mirroring (Abstract; Fig. 3), said method comprising the steps of:

replicating data from said first network location to a first remote network location of said one or more remote network locations (Col. 3, ln. 4-6); and

replicating at said first remote network location of said one or more remote network locations, said replicated data from said first network location to a second

remote network location of said one or more remote network locations to allow said first network location to perform said remote data mirroring across multiple remote network locations (Col. 3, ln. 6-12).

15. As to claim 23, Wilson discloses said computer network transmission capacity bandwidth between said first network location and said first remote network location differs from said computer network transmission bandwidth capacity between said first remote network location and said second remote network location, wherein said first remote network location operates as a secondary data repository to said first network location while operating as an originating location for said remote data mirroring of said replicated data to said second remote network location (Fig. 3, items 114 and 304; Col. 12, ln. 57-Col. 13, ln. 11; Col. 30, ln. 24-46; a T3 line is used between storage controllers, while the network cloud accessed by users may be implemented using any of a number of different options; users replicate data at a speed consistent with their connection to the network cloud, while storage controllers may transfer the same replicated data using the T3 line).

16. As to claim 24, the claim is rejected for the same reasons as claim 23 above.

17. As to claims 25 and 27, Wilson discloses said first communications manner of comprises synchronous communications (Col. 10, ln. 12-16).

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18. As to claims 26 and 28, Wilson discloses said first communications manner comprises asynchronous communications (Col. 9, ln. 61-64).

19. As to claims 29, 33, and 41, Wilson discloses communications from said first network location to said one or more remote locations occurs in the Transport Control Protocol/Internet Protocol (TCP/IP) protocol suite (Col. 32, ln. 27-32 and 39-43).

20. As to claims 30 and 38, Wilson discloses said first network location and said on or more network locations operate without a volume manager facility (Col. 8, ln. 45-50; data replication is carried out automatically by each storage controller without the use of a volume manager facility).

21. As to claim 31, Wilson discloses a method for replicating data from a first location to a plurality of remote locations (Abstract; Fig. 3), said method comprising the steps of:  
replicating a selected data structure at said first location (Col. 3, ln. 4-6); and  
transmitting said replicated data structure to a first of said plurality of remote locations for replication of said replicated data structure to a second of said plurality of remote locations (Col. 3, ln. 6-12).

22. As to claims 32 and 40, Wilson discloses replicating said replicated data structure at said first of said plurality of remote locations (Col. 2, ln. 61-Col. 3, ln. 12);  
and



transmitting said replication of said replicated data structure to said second of said plurality of remote locations (Col. 3, ln. 6-12).

23. As to claims 34 and 42, Wilson discloses said transmission of said replicated data structure to said first of said plurality of remote locations occurs at a first transmission rate (Fig. 3, item 114; Col. 30, ln. 24-46).

24. As to claims 35 and 43, Wilson discloses said transmission of said replication of said replicated data structure from said first of said plurality of remote locations to said second of said plurality of remote locations occurs at a second transmission rate (Fig. 3, items 304; Col. 12, ln. 57-Col. 13, ln. 11).

25. As to claims 36 and 44, Wilson discloses said first location comprises a workstation executing a first operating system (Col. 35, ln. 2-12; it is inherent that host computers accessing a network cloud and sharing data have an operating system).

26. As to claim 39, the claim is rejected for the same reasons as claim 31 above. Additionally, Wilson discloses a computer readable medium holding computer executable instructions (Col. 35, ln. 19-25).

***Claim Rejections - 35 USC § 103***

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27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 2-3, 5, 8-11, 13-14, 19, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shakib, in view of Wilson.

29. As to claims 2 and 8, Shakib does not disclose forwarding from said first data replication facility at said first computer to said one or more computers information identifying a storage location on a storage device of said one or more computers for said replica.

However, Wilson does disclose forwarding from said first data replication facility at said first computer to said one or more computers information identifying a storage location on a storage device of said one or more computers for said replica (Col. 8, In. 45-50; Col. 32, In. 39-45; Col. 33, In. 1-8).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by forwarding information identifying a storage location on a storage device as taught by Wilson in order to send a packet that identifies the destination of the packet (Wilson, Col. 32, In. 39-45).

30. As to claims 3, 11, and 19, Shakib does not disclose said first computer forwards said replica to said plurality of remote data volumes in a synchronous manner.

However, Wilson does disclose said first computer forwards said replica to said plurality of remote data volumes in a synchronous manner (Col. 10, ln. 12-16).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by forwarding replicated data in a synchronous manner as taught by Wilson in order to verify that replication has been completed successfully at the storage system (Wilson, Col. 10, ln. 3-7).

31. As to claims 5, 10, and 21, Shakib does not disclose said communication protocol comprises the Transmission Control Protocol/Internet Protocol (TCP/IP) protocol suite.

However, Wilson does disclose said communication protocol comprises the Transmission Control Protocol/Internet Protocol (TCP/IP) protocol suite (Col. 32, ln. 27-32 and 39-43).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by using the TCP/IP protocol suite as taught by Wilson in order to pass information over the Internet (Wilson, Col. 32, ln. 39-43).

32. As to claim 9, Shakib does not disclose replicating said data volume from said first of said computers to a plurality of volumes on a second of said computers.

However, Wilson does disclose replicating said data volume from said first of said computers to a plurality of volumes on a second of said computers (Col. 8, In. 28-33).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by replicating a data volume to a plurality of volumes as taught by Wilson in order to integrate additional storage space into a single logical volume by adding an additional physical volume into the logical volume.

33. As to claim 13, Shakib does not disclose said data volume is a logical data volume.

However, Wilson does disclose said data volume is a logical data volume (Col. 8, In. 18-22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by using a logical data volume as taught by Wilson in order to logically separate physical devices to categorize and isolate data without the need for a separate physical device.

34. As to claim 14, Shakib does not disclose said data volume is a physical data volume.

However, Wilson does disclose said data volume is a physical data volume (Col. 8, In. 22-24).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Shakib by using a physical data volume as taught by Wilson in order to store information in a tangible, central location easily accessible by a user desiring physical access to the data volume.

35. Claims 37 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson, in view of Nambu, U.S. Patent No. 6,826,665 B1.

36. As to claims 37 and 45, Wilson does not disclose said first of said plurality of remote locations comprises a server executing a second operating system.

However, Nambu does disclose said first of said plurality of remote locations comprises a server executing a second operating system (Fig. 1, item 13a; Col. 2, ln. 50-52).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Wilson by using a second operating system on a server as taught by Wilson in order to install a preferred operating system, such as the more secure Unix operating system, on a server without requiring workstations to run the same operating system.

### ***Conclusion***

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gagne et al., U.S. Patent No. 6,209,002 B1 discloses a data storage facility for transferring data from a local site to a first remote site and mirroring data from the first remote site to a second remote site.

Sicola et al., U.S. Patent No. 6,629,264 B1 discloses a data replication system having a redundant configuration interconnecting each of the components of two data storage sites.

Cato et al., U.S. Patent No. 6,728,751 B1 discloses backing up data of client machines to selected other client machines within a network.

38. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Whipple whose telephone number is (571)270-1244. The examiner can normally be reached on Mon-Thu (7:30 to 5), Fri (8:30 to 5 or day off).

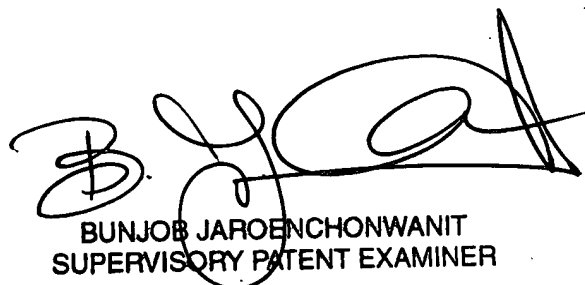
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571)272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BPW

Brian P. Whipple  
1/22/07



BUNJOB JAROENCHONWANIT  
SUPERVISORY PATENT EXAMINER